IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 344 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DINESHBHAI M PANDIT

Appearance:

Mr S P Dave, APP for Petitioner

MR HM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/04/2001

ORAL JUDGEMENT

The state of Gujarat through its Drugs Inspector, Jamnagar has preferred this Revision Application under Section 397 and 401 of the Criminal Procedure Code, 1973 (for short, 'the Code'), challenging the judgment and order dated 28.4.1994 recorded by the learned Sessions

Judge, Jamnagar in Criminal Revision Application No.94/93 under which the learned Sessions Judge allowed the said Revision Application of the present respondent and quashed and set aside the order dated 27.3.1993 passed by the learned Judicial Magistrate First Class, Khambhalia, below application Exh.65 in Criminal Case No.1265/90 and directed that the present respondent be ordered to be discharged from the offence punishable under Section 18 (a)(1) read with Sections 27 and 34 of the Drugs and Cosmetics Act, 1940 (for short, 'the Act'). The facts may be briefly stated as follows:

2. The present respondent along with his company and other accused persons were prosecuted in the aforesaid criminal case before the Ld.JMFC, Khambhalia for the aforesaid offence. It was noticed that the drug-tablets seized and sent for chemical analysis were not found upto the standard and, therefore, the aforesaid complaint was filed against the present respondent and other accused persons.

3. The present respondent submitted an application before the learned JMFC on 31.3.1993 stating that he was not at all responsible for manufacturing the said drug and that he has not committed any offence and therefore, he be discharged from the said offence. After hearing the present respondent and original complainant, the learned Magistrate found that the respondent has not proved his case and, therefore, the learned Magistrate dismissed the application of the present respondent by order dated 27.4.1993. Feeling aggrieved by the said order of the learned Magistrate, the respondent preferred the aforesaid Criminal Revision Application being 94/93 and raised the same contentions before the Sessions Court. After hearing the parties, the learned Sessions Judge passed order dated 28.4.1994, which is impugned in this Revision Application, allowed the said Revision Application and discharged the respondent from the aforesaid offence.

4. Feeling aggrieved by the said judgment and order of the Sessions Court, the State has preferred this Revision before this Court. It has been mainly contended here that the learned Sessions Judge committed serious illegality in discharging the respondent from the offence in question and, therefore, the judgment and order of the learned Sessions Judge are illegal and erroneous and deserve to be set aside. It is, therefore, prayed that the present Revision Application be allowed and the judgment and order of the learned Sessions Judge be set aside and the present respondent be directed to be tried

before the learned Magistrate for the offence in question.

5. Rule was issued in the Revision Application and Mr H M Parikh, learned Advocate has appeared in response to the service of rule. I have heard learned APP Mr S P Dave and Mr H M Parikh, learned Advocate for the respondent.

6. During the course of his argument, learned APP has argued that the State has come out with a case that the respondent was responsible for the manufacturing of the drug in question and he should have been prosecuted and he should not have been discharged unless evidence was gone into.

7. During the course of the arguments, it was noticed that the learned Sessions Judge has recorded his finding in para 27 of the judgment to the effect that the present respondent cannot be said to be a person responsible for manufacturing sub-standard drug and/or he cannot be said to have assumed knowledge of the sub-standard quality of the drug in question. That it cannot be presumed that the drug was manufactured with the consent or connivance of, or was attributable to any neglect on the part of the present respondent. During the course of his argument, learned APP was not in a position to say that the above finding is incorrect. He was not in a position to dislodge the finding and no other evidence was shown on the basis of which the said finding can be set aside. Unless the said findings are set aside, it would not be possible for this court to hold that the judgment of the learned Sessions Judge is illegal and erroneous. After all this court's revisional jurisdiction, powers and functions are very limited. Unless the order of the lower court is found to be illegal and perverse, this court cannot lightly brush it aside particularly when the findings of fact have been recorded by the Sessions Court and when the learned APP was unable to dislodge the same. In view of the aforesaid. it has to be held that there is no merit in this revision and, therefore, it deserves to be dismissed.

8. In the result, this revision application is ordered to be dismissed. Rule is discharged.

10.4.2001 [D P Buch, J.]
msp